# STATE OF MICHIGAN

# COURT OF APPEALS

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| In the Matter of BROWN/YOUNG, Minors. | UNPUBLISHED<br>July 24, 2014<br><br>No. 319515<br>Wayne Circuit Court<br>Family Division<br>LC No. 09-487802-NA |
| In the Matter of BROWN/YOUNG, Minors. | No. 319517<br>Wayne Circuit Court<br>Family Division<br>LC No. 09-487802-NA |

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

Respondent C. Brown (respondent-mother) appeals as of right in Docket No. 319515 and respondent A. Young (respondent-father) appeals as of right in Docket No. 319517 from the trial court's order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g) and (i). We affirm.

## I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondents have a prior history with petitioner, Department of Human Services (DHS), dating back to 2009, when AB was removed from their care due to issues involving respondents' inability to care for her and protect her from harm. Respondents were offered services including, Wraparound, parenting classes, mental health counseling, Early-On, Family Reunification Program, Clinic for Child Study (CCS), Parent Partners, and the Guidance Center's Parent/Infant Program. AB was released back to respondents' home in 2010 with reunification services to continue in home and continued monitoring of respondent-mother's mental health status. On October 15, 2010, the trial court terminated its jurisdiction over AB.

On August 30, 2013, petitioner filed a petition for permanent custody of the minor children, AB (born March 15, 2009) and JY (born October 6, 2012). The petition alleged that Child Protective Services (CPS) received a complaint on August 15, 2013, alleging that JY was physically neglected. A CPS Investigator visited respondents' home and found it to be unclean, cluttered, and unsuitable for a child. JY was diagnosed with failure to thrive, had been

hospitalized for malnourishment, and was significantly developmentally delayed. AB had been residing with a guardian since March 2012, because respondents were unable to care for her. Following a preliminary hearing, the trial court authorized the petition and placed the children under the supervision of the DHS. JY was placed with his paternal grandmother, Evelyn Young, and AB was placed with her guardian, Amy Johnson, who was respondent-father's ex-wife. Both respondents were granted supervised visitation.

At a trial on October 7, 2013, CPS Investigator Heather DeCormier McFarland testified that she visited respondents' home on August 19, 2013, after receiving a complaint that JY was malnourished and underdeveloped, and that the home was not safe for a child his age. She discovered that the garbage was overflowing, food was splattered on the wall, and there were a lot of small articles on the carpet that posed a choking hazard for a small child. JY's crib was also unsafe because the mattress was at the highest setting and the railing had been lowered. McFarland also observed that JY appeared to be undernourished and did not appear to have appropriate control of his head for his 10-month age. He had previously been diagnosed with failure to thrive by his pediatrician.

JY was admitted to Mott's Children's Hospital on August 21, 2013, and was hospitalized for nine days due to malnourishment. He exhibited impaired strength, balance, and coordination, and was delayed developmentally. He gained almost a pound while in the hospital. No medical reason was found for JY's malnourishment.

Respondent-mother was evaluated by CCS in November 2009. She was diagnosed with schizophrenia and bipolar disorder. She admitted having a history of emotional instability, suicidal ideations, and auditory hallucinations. Respondent-father was also evaluated at CCS in 2009. The evaluator reported that he "appeared to lack insight into the seriousness of [respondent-mother's] mental health issues and how they could potentially place [AB] in harm's way and acknowledged little responsibility for his daughter entering the foster care system."

McFarland testified that respondents had received services through the Guidance Center's Parent/Infant Program for almost four years to aid them in learning to properly care for, feed, and interact with their children. They had canceled more appointments than they had kept. According to McFarland, because of respondent-mother's mental health issues, she was not able to meet the children's physical and developmental needs without assistance. Respondent-father held two part-time jobs and worked for himself cleaning windows. Respondent-father had been advised numerous times that he needed to find someone other than respondent-mother to care for JY, but he had not made any attempts to rectify the situation. Since JY was placed in foster care, he had progressed well and gained weight.

Amy Johnson, respondent-father's ex-wife, testified that respondent-father contacted her in January 2012 and asked if she could watch AB overnight because respondent-mother was not home and he needed to work the next day. Two days later, CPS contacted her and asked if the child could remain with her pending an investigation. AB had remained with her since then, until just two weeks before the termination hearing. Johnson testified that she was on "good terms" with both respondents, but did not socialize with them.

Johnson stated that AB had behavioral and mental health issues. Johnson took her to a mental health facility because she was hurting herself. On one occasion, Johnson found AB with a belt around her neck, fashioned like a noose, attached over the top of her bunk bed. AB was diagnosed with severe autism and a psychotic disorder. AB was very difficult to care for and could not be left alone because she would cut or stab herself with things, bang her head purposefully, or throw herself around in a tantrum. She required a great deal of consistency and a very specific routine. In March 2013, Johnson took AB to a therapist because she was waking up screaming at night, breaking things, and smearing her feces on the walls.

Johnson received a lot of help and support from her mother in order to care for AB. Johnson did not receive any support from respondents and never really communicated with them. Respondents did not call AB on her birthday or special occasions. Over the course of two years, respondents provided "two pairs of gym shoes and maybe three outfits" for the child. Respondents were allowed to visit AB at Johnson's mother's house on Fridays, but Johnson was never present for the visits and did not know how often they came. AB did not refer to respondent-mother as her mother and was not comfortable around respondent-mother.

Johnson gave up her guardianship of AB approximately two weeks before the trial because Johnson's mother was unable to continue to assist with AB's care while Johnson worked. Johnson could not afford day care or find anyone else she trusted to care for AB and "it was just too much."

At the conclusion of the trial, the court announced that it would issue its decision on October 22, 2013. On that date, the court issued its decision from the bench:

> I've had the opportunity not only to review the legal file, but to review my notes from the trial and as well as the medical records. And it's very clear to me that in this case, there has been a long term and history of poor parenting in this matter. Originally, [AB] was a court ward and what was additionally shocking to me in the testimony that why she was returned to the father after that, soon thereafter, she was dropped off at the father's ex-wife's home and that person got guardianship. I am concerned that many of the same issues that were present in that case are present now. I am concerned and bothered by the fact the testimony elicited indicated that in-home parenting had been Parent/Infant Program had been working three to four years with this family, even though the parents had frequently cancelled appointments according to the testimony. But the father was told previously in the prior wardship and in this case that the mother really needed assistance. He was told he needed to find an alternative care taker and that wasn't done. And [JY]'s failure to thrive is shocking. That young child is below the birth weight. That young child at ten months was shockingly neglected and has everything that appears to be normal in terms of his ability to gain weight as evidence by the fact that when he went into the hospital he promptly did gain weight. And there was no medical reason found by U of M.
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> Now, I think the parents may be trying as hard as they're able to care for these children. But, it's clearly not sufficient. One of these children spent a year in care and has now been back into care although was out of the parents' home for

> a substantial period of time. The other child in the parents' care was grossly neglected whether intentionally or unintentionally and the Court finds that the Attorney General has sustained on all grounds pled clear and convincing evidence that termination of parental rights.

Regarding the children's best interests, the trial court stated:

> I think it's clearly in the best interest of [AB] who's been in care before and then was in guardianship with someone else who appears to have little relationship with her parents, has her own special needs and individually concerning [AB]'s best interest, I find that it is in her best interest to terminate her parental rights. With regard to [JY], in reviewing the entirety of the file, I think that given the history of his sister, that it is also in his best interest considered individually that this child grow up in a home where he's appropriately exposed to feeding, is regularly fed and I individually find it is also in his best interest to terminate parental rights. And so, having found clear and convincing evidence, I find it's in the best interest to terminate the parental rights of both the mother and the father.

The referee also issued a separate written report and recommendation in which she indicated that grounds for termination were established pursuant to MCL 712A.19b(3)(b)(*i*), (b)(*ii*), (g), and (i), without differentiating these grounds between respondents.

## II. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the trial court erred in finding that the evidence supported a statutory ground for termination. We disagree. The petitioner has the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). A trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *Id*. Because it is only necessary to establish one statutory ground for termination, where parental rights are improperly terminated under one ground, the error is harmless if there is another statutory ground to support the trial court's decision. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

We do agree that the trial court clearly erred in relying on § 19b(3)(i) as a statutory basis for termination. That subsection applies where "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." As petitioner and the minor children both concede, there was no evidence that either respondent's parental rights to any other child were previously terminated.

We also find clear error in the trial court's reliance on §§ 19b(3)(b)(*i*) and (b)(*ii*) as statutory grounds for termination. Those subsections are applicable where a child "has suffered physical injury or physical or sexual abuse" under circumstances where a parent's act caused the

physical injury or physical or sexual abuse, § 19b(3)(b)(*i*), or the parent failed to prevent physical injury or physical or sexual abuse, § 19b(3)(b)(*ii*). The trial court did not identify in either its decision on the record or its written report and recommendation any physical injury or abuse suffered by either child, nor did it identify any act by either respondent that it believed caused an injury or qualified as abuse.

Further, we disagree with petitioner's and the minor children's arguments that JY's failure to thrive condition is sufficient to support the trial court's reliance on §§ 19b(3)(b)(*i*) and (b)(*ii*). The trial court did not link that condition to its conclusion that §§ 19b(3)(b)(*i*) and (b)(*ii*) were both established. Indeed, the trial court did not provide any factual explanation for its belief that the elements of §§ 19b(3)(b)(*i*) and (b)(*ii*) were satisfied. The trial court repeatedly characterized JY's condition as caused by neglect, such as when it stated that JY had been "grossly neglected whether intentionally or unintentionally[.]" The trial court also stated "I think the parents may be trying as hard as they're able to care for these children." These statements and the record evidence on which they are based preclude us from finding that JY's failure to thrive supported termination under §§ 19b(3)(b)(*i*) and (b)(*ii*). Because there was no other evidence of any physical injury or abuse to either child, we conclude that the trial court clearly erred in finding that termination was justified under §§ 19b(3)(b)(*i*) or (b)(*ii*).

However, we hold that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence with respect to both respondents. JY was hospitalized for nine days for failure to thrive and malnutrition while in respondents' care. He was also significantly developmentally delayed. Respondents also failed to provide proper care for AB, who was previously made a court ward in 2009. After AB was reunited with respondents, they were unable to care for her and placed her in a guardianship with respondent-father's ex-wife. The guardian terminated the guardianship approximately two weeks before the termination proceeding because she was unable to continue to care for the child, who has significant special needs.

Further, there is no reasonable expectation that either respondent will be able to provide proper care and custody for the children within a reasonable time. Respondent-mother has significant mental health issues that prevent her from properly caring for a child without assistance. Respondent-father lacks insight into the seriousness of respondent-mother's condition such that he refuses to accept respondent-mother's limitations and is unwilling to make alternative childcare arrangements while he is at work. Further, both respondents previously received services in connection with AB's prior wardship in 2009, and then received continuing in-home services after the daughter was reunited with respondents, and after the birth of JY. Respondents failed to benefit from these services. Respondents were unable to care for AB, who they placed with a non-relative guardian. JY remained in respondents' custody, but was eventually hospitalized for failure to thrive and was significantly developmentally delayed while in respondents' care.

Considering respondent-mother's inability to care for the children without assistance because of her significant mental health issues, respondent-father's lack of insight into respondent-mother's limitations and his unwillingness to make other arrangements for the children's care while he works, the evidence that neither respondent was able to meet the children's basic needs while the children were in respondents' care, and the fact that prior

services had not been successful in improving respondents' parenting abilities, the trial court did not clearly err in finding that there was no reasonable expectation that either respondent would be able to provide proper care and custody within a reasonable time considering the children's ages.

## III. BEST INTEREST DETERMINATION

Finally, considering respondent-mother's mental health history, respondent-father's inability to comprehend the seriousness of respondent-mother's mental health issues, and the special needs of both children, the trial court did not clearly err in finding that termination of respondents' parental rights was in the children's best interest. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Neither respondent presented substantive argument regarding the trial court's best interest determination. Both children have special needs; AB because of her autism and significant behavioral and mental health issues, and JY because of his failure to thrive and significant developmental delays. Considering respondent-mother's mental health history and respondent-father's inability to comprehend the seriousness of respondent-mother's mental health issues, the trial court did not clearly err in finding that termination of respondents' parental rights was in the children's best interest.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto